

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>KENNETH W. BELL</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 227,195
<b>CARDINAL BUILDING SERVICES, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>HARTFORD ACCIDENT &amp; INDEMNITY</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

The Kansas Department of Revenue appealed from the Order entered by Administrative Law Judge Bryce D. Benedict on November 13, 1997.

**APPEARANCES**

The Kansas Department of Revenue appeared by its attorney, Ronald H. Grant of Topeka, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Jeff K. Cooper of Topeka, Kansas. Neither the claimant, respondent nor respondent's insurance carrier appeared.

**RECORD AND STIPULATIONS**

The record consisted of the transcript of proceedings held before Administrative Law Judge Bryce D. Benedict on November 12, 1997, and the documents contained in the Division of Workers Compensation administrative file.

### ISSUES

The Kansas Department of Revenue filed a Motion to Quash Subpoena Duces Tecum issued by the Division of Workers Compensation at the request of the Kansas Workers Compensation Fund. The subpoena duces tecum requested the Kansas Department of Revenue to produce all tax records of respondent, Arnold Gordon d/b/a Cardinal Building Services, Inc., for the tax years of 1996 and 1997.

After a hearing on the motion, the Administrative Law Judge denied the Kansas Department of Revenue's motion and then ordered the Kansas Department of Revenue to produce the respondent's tax records. The Administrative Law Judge's denial of the motion to quash the subpoena is the single issue for Appeals Board review.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs of the parties, the Appeals Board finds as follows:

Before the Appeals Board discusses the merits of this appeal, it will first address whether it has jurisdiction to review the Administrative Law Judge's November 13, 1997, Order.

This is not an appeal from an order entered pursuant to the preliminary hearing statute in K.S.A. 1997 Supp. 44-534a. An appeal from a preliminary hearing either must allege that the administrative law judge exceeded his/her jurisdiction or one of the jurisdictional issues listed in K.S.A. 1997 Supp. 44-534a must be raised. This appeal is a result of a hearing held, prior to the final award, on the Kansas Department of Revenue's motion to quash a subpoena duces tecum that requested respondent's tax records for 1996 and 1997. For the Appeals Board to have jurisdiction to review this order, at this juncture of the proceeding, the appeal would have to be brought pursuant to K.S.A. 1997 Supp. 44-551(b)(1).

The 1997 Kansas Legislature amended K.S.A. 1996 Supp. 44-551(b)(1). Effective July 1, 1997, the amendment changed the jurisdiction of the Appeals Board from reviewing "[a]ll acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge" to review of "[a]ll final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge."

The Appeals Board finds the Order, which is the subject of this appeal, is not a final order, award, modification of an award, or a preliminary hearing award as contemplated by K.S.A. 1997 Supp. 44-551(b)(1). The Appeals Board concludes the order is an interlocutory order made by the Administrative Law Judge during the litigation of a workers compensation case. It is an order that the Administrative Law Judge has the authority to

make during the trial process and the Appeals Board lacks jurisdiction to review the order until it is contained in a final order or award.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Kansas Department of Revenue's appeal from the Order entered by Administrative Law Judge Bryce D. Benedict, dated November 13, 1997, should be, and is hereby dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: John J. Bryan, Topeka, KS  
Heather Nye, Kansas City, MO  
Jeff K. Cooper, Topeka, KS  
Ronald H. Grant, Department of Revenue  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director